

Article 2 | Review Authority

Sec. 2.1 Governing Bodies

2.1.1 Defined

The governing bodies identified in the text of this Ordinance as having authority to enforce certain provisions of this Ordinance are:

A. Durham County Board of Commissioners

The Durham County Board of Commissioners (hereinafter referred to as the Board of Commissioners) for property located within Durham County but located outside of any City limits.

B. Durham City Council

The Durham City Council for property located within the City limits of the City of Durham.

2.1.2 Powers and Duties

The governing bodies shall be responsible for final action regarding the following:

- A.** Amendments to the adopted Comprehensive Plan, including the annual Evaluation and Assessment Report;
- B.** Amendments to the text of this Ordinance;
- C.** Applications for zoning map changes;
- D.** Applications for major site plans;
- E.** Applications for historic district/landmark designation;
- F.** Applications for major special use permits and TIA special use permits; and
- G.** Vested rights determinations that require a public hearing pursuant to Sec. 3.20, Statutory Vested Rights Determination.
- H.** The *Durham Design Manual* and the *Landscape Manual for Durham, NC* (the *Landscape Manual*), including any subsequent revisions.

Sec. 2.2 Joint City-County Planning Committee (JCCPC)

2.2.1 Establishment

The Joint City-County Planning Committee (JCCPC) is established in accordance with the Interlocal Cooperation Agreement on City-County Planning.

2.2.2 Membership

Members of the JCCPC shall be appointed in accordance with the Interlocal Cooperation Agreement on City-County Planning.

2.2.3 Powers and Duties

- A.** The power and duties of the JCCPC shall be in accordance with the Interlocal Cooperation Agreement on City-County Planning.
- B.** The JCCPC shall also be responsible for review and recommendation regarding amendments to the text of this Ordinance and policies of the Durham Comprehensive Plan that affect both the City and County jurisdictions.
- C.** The JCCPC shall be responsible for review of the Administrative Guidelines established by the Planning Director governing neighborhood meetings pursuant to Sec. 3.2.3, Neighborhood Meeting; the guidelines for establishing Neighborhood Protection Overlays pursuant to Sec. 4.6.2, Establishment of Overlay; the *Landscape Manual* pursuant to paragraph 9.2.1, Landscape Manual; and the *Durham Design Manual* pursuant to paragraph 6.12.2A.7, *Durham Design Manual*.

Sec. 2.3 Planning Commission

2.3.1 Establishment

The Durham Planning Commission was created by the Board of Commissioners and the City Council on July 1, 1988 in accordance with the Interlocal Cooperation Agreement on City-County Planning.

2.3.2 Membership, Terms and Compensation

Planning Commission numbers, composition, terms, vacancies, removals, and compensation shall be in accordance with the Interlocal Cooperation Agreement on City-County Planning.

2.3.3 Officers, Meetings, Quorum

Planning Commission officers, meetings, quorum, and rules of procedure shall be in accordance with the Interlocal Cooperation Agreement on City-County Planning and consistent with State statutes.

2.3.4 Rules of Procedure

The Planning Commission shall adopt rules of procedure for the conduct of its business, consistent with State law and this Ordinance.

2.3.5 Powers and Duties

The Planning Commission shall have the following powers and duties.

A. Review Authority

1. The Planning Commission shall be responsible for reviewing and making recommendations (which shall be construed as meeting the certification required by NCGS §153A-344 or NCGS § 160A-387, as applicable) regarding the following:
 - a. Adoption of or amendments to the Comprehensive Plan and related plans;
 - b. Amendments to the text of this Ordinance;
 - c. Applications for zoning map change;
 - d. Applications for historic district designation;
 - e. Adoption of or amendment to redevelopment plans as set forth in NCGS §160A-513; and
 - f. The Planning Department Annual Work Plan.
2. All decisions and recommendations of the Planning Commission shall require an affirmative vote. Tie votes shall be considered decisions or recommendations for denial.
3. The Planning Commission shall perform related duties as directed by the governing bodies.
4. The Planning Commission may exercise additional powers as may be described elsewhere in this Ordinance and as permitted by the Interlocal Cooperation Agreement on City-County Planning.

B. Annual Report

The Planning Commission shall prepare an annual report and submit it to the Board of Commissioners and the City Council. The annual report shall include a comprehensive review of the Planning Commission's activities, problems, and actions of the Planning Commission and any budget requests or other recommendations.

Sec. 2.4 Board of Adjustment (BOA)

2.4.1 Establishment

The Board of Adjustment is established in accordance with the Interlocal Cooperation Agreement on City-County Planning and NCGS §160A-388, NCGS §153A-345, and in accordance with special legislation adopted for the City and County regarding the Board of Adjustment.

2.4.2 Membership, Terms and Compensation

The Board of Adjustment shall consist of seven members and three alternates. Its composition, terms, vacancies, removals, and compensation shall be in accordance with the Interlocal Agreement on City-County Planning.

2.4.3 Officers, Meetings, Quorum

Board of Adjustment officers, meetings, and quorum shall be in accordance with the Board's adopted *Rules of Procedure* and Interlocal Cooperation Agreement on City-County Planning.

2.4.4 Rules of Procedure

The Board of Adjustment shall adopt rules of procedure for the conduct of its business, consistent with State law, special legislation, the City-County Interlocal Agreement and this Ordinance.

2.4.5 Powers and Duties

The Board of Adjustment shall have the following powers and duties.

A. Authority

1. The Board of Adjustment shall be responsible for final action regarding the following:
 - a. Applications for variances; and
 - b. Applications for design and minor special use permits.
 - c. Appeals of decisions made by administrative officials interpreting the provisions of this Ordinance.
2. The Board of Adjustment shall perform related duties as directed by the governing bodies.

B. Annual Report

The Board of Adjustment shall prepare an annual report in accordance with the Board's adopted *Rules of Procedure* and the City-County Interlocal Agreement.

2.4.6 Decisions

- A. Voting requirements for written decisions, where required, and for other actions shall be as specified in the Board's adopted *Rules of Procedure*.
- B. Every quasi-judicial decision of the Board of Adjustment shall be reduced to writing and subject to review by the superior court by proceedings in the nature of a petition for a writ of certiorari pursuant to NCGS § 160A-393 or NCGS § 153A-345.1, as applicable. Any petition for review by the court shall be filed with the clerk of superior court by the later of 30 days

after the decision of the Board of Adjustment is effective, or after a written copy thereof is delivered to the party who has made a request for such decision in compliance with paragraph C. below, whichever is later. When first class mail is used to deliver notice of the decision, three days shall be added to the time to file the petition.

- C.** Any party desiring a copy of the decision of the Board of Adjustment shall file a written request with the Planning Department prior to the effective date of the decision. Such decisions shall be delivered by personal delivery, electronic mail, or by first class mail.
- D.** A written decision shall be considered filed with the clerk of the Board of Adjustment, and thus effective, on the date that the final necessary signature on such decision is obtained and the decision is ready for distribution.

Sec. 2.5 Historic Preservation Commission (HPC)

2.5.1 Establishment

The Durham Historic Preservation Commission (HPC) is established in accordance with NCGS §160A -400.7. The HPC is designated as the historic preservation advisory and quasi-judicial body for the County and City, and shall have the powers and duties described in this section.

2.5.2 Membership, Terms and Compensation

A. Numbers

The HPC shall consist of nine members. All County appointees shall be residents of Durham County and all City appointees shall be residents of the City.

B. Composition

1. A majority of the members of the HPC shall have demonstrated special interest, experience or education in history or architecture.
2. The HPC shall always include at least one of each of the following five designations:
 - a. Registered architect;
 - b. Registered landscape architect;
 - c. Social or cultural historian;
 - d. Representative of a lending institution or an attorney; and
 - e. Real estate agent, developer or builder.
3. The five designated members shall be appointed as follows:
 - a. The Board of Commissioners shall appoint a landscape architect, a social or cultural historian and a representative of a lending institution or an attorney; and
 - b. The City Council shall appoint an architect and a real estate agent, builder, or developer.
4. The HPC shall also include four at-large members, as follows:
 - a. Two of the at-large members shall be appointed by the Board of Commissioners; and
 - b. Two of the at-large members shall be appointed by the City Council, one of whom shall be selected by the Mayor.
5. In making appointments to the HPC, the Board of Commissioners and the City Council shall:
 - a. Give special preference to current members, to provide continuity in historic preservation planning;
 - b. Make a reasonable effort to provide representation for both urban and rural interests among geographic areas; and

- c. Consider the recommendations for appointments from the JCCPC; however, neither elected body is bound to follow any recommendations for appointment which that Committee may make.
- 6. All members of the HPC shall have equal rights regardless of whether the matters at issue are located inside or outside of the Durham City limits.
- C. Terms**
 - 1. The regular term of office for HPC members shall be three years.
 - 2. A member may be reappointed for a second term. After two consecutive terms, a member shall be ineligible for reappointment until one calendar year has elapsed from the date of termination of his or her second term.
 - 3. A term shall continue until a successor is appointed by the appropriate governing body.
- D. Vacancies**

Vacancies occurring for reasons other than the expiration of terms shall be filled by the appointing authority for the period of the unexpired term.
- E. Compensation of Members**

The members of the HPC may be compensated for their services in such amounts as from time to time shall be determined by the governing bodies.

2.5.3 Organization, Meetings, Quorum

- A. Officers**

The HPC shall elect its own officers. The HPC officers shall consist of a Chairperson and Vice Chairperson. The HPC may establish committees and subcommittees at its discretion.
- B. Meetings**

The HPC shall establish a regular meeting time and shall meet at least monthly, unless the Chairperson and the Planning Director, or designee, jointly determine that there is no business requiring that a meeting take place, in which case meetings may be cancelled. All meetings shall be open to the public and shall conform to the North Carolina Open Meetings Law, Chapter 143, Article 33C of the North Carolina General Statutes.
- C. Minutes**

The HPC shall keep permanent minutes of its meetings. The minutes shall include the attendance of its members and its resolutions, findings, recommendations and other actions.
- D. Quorum**

The presence of five HPC members shall be necessary for a quorum, except in cases involving demolition by neglect, in which case six members shall be necessary for a quorum. A quorum is necessary to take official action. A roll call vote shall be taken upon the request of any member.
- E. Rules of Procedures**

The HPC shall adopt rules of procedure for the conduct of its business.

2.5.4 Powers and Duties

The HPC is authorized and empowered to undertake such actions reasonably necessary to discharge and conduct its duties and responsibilities.

A. General Authority

The HPC shall act to promote, enhance and preserve the character and heritage of the Durham community. The HPC has the following general authority:

1. To undertake inventories in Durham County of properties of historical, architectural or archaeological significance.
2. To sponsor or conduct educational programs regarding Historic Districts or Historic Landmarks.
3. To give advice to property owners concerning the treatment of the historical and visual characteristics of his or her property located within any Historic District or designated as an Historic Landmark, such as color schemes, gardens and landscape features, and minor decorative elements.
4. To cooperate with the State, Federal and local governments in historic preservation matters.
5. To enter, solely in the performance of its official duties and only at reasonable times and only with the consent of the property owner, upon private land for the examination or survey of the property. However, no member, employee or agent of the HPC may enter any private building or structure without the express consent of the occupants or owner.
6. Recommend to the Board of Commissioners and/or the City Council the following:
 - a. Areas to be designated by ordinance as Historic Districts;
 - b. The designation of any Historic District be revoked or removed;
 - c. Buildings, structures, sites, areas or objects within their relative areas of zoning jurisdiction to be designated by ordinance as Historic Landmarks;
 - d. The designation of any building, structure, site, area, or object as an Historic Landmark be removed;
 - e. Other means of preservation and intervention at such times as vital historic resources appear, in the view of the HPC, to be threatened by neglect, use, demolition, or alteration; and
 - f. Changes to the City-County Interlocal Agreement which establishes the HPC, or any other related County and City ordinances, and to propose new ordinances relating to Historic Districts, Historic Landmarks or the total program for the development and preservation of historic resources of Durham and its environs.

B. Demolition by Neglect

For purposes of Sec. 3.18, Demolition by Neglect (City Only), the Historic Preservation Commission is designated a Planning Agency under GS 160A-361 and GS 153A-345, authorized to operate as a Board of Adjustment (BOA) and make quasi-judicial decisions under GS 160A-388(a), and GS 153A-321 for the administrative determinations described herein.

C. Review Authority

The HPC shall be responsible for reviewing and making recommendations regarding applications for historic/landmark designations.

D. Final Authority

The HPC shall be responsible for final action regarding applications for certificates of appropriateness.

E. Annual Report

The HPC shall prepare an annual report and submit it to the Board of Commissioners and the City Council. The annual report shall include a comprehensive review of the HPC's activities, problems, and actions of the HPC and any budget requests or other recommendations.

2.5.5 Decisions

A. An affirmative vote of a majority of members present and voting shall be required for all actions except as noted below.

B. The voting requirements applicable to the Board of Adjustment in paragraph 2.4.6, Board of Adjustment Decisions, shall be used for HPC decisions when the HPC is functioning as a Board of Adjustment under Sec. 3.18, Demolition by Neglect (City Only).

Sec. 2.6 Other Advisory Bodies

A variety of other commenting or advisory bodies approved by a governing body may participate in development review under this Ordinance, including, but not limited to:

- A.** The Durham Open Space and Trails Commission;
- B.** The Durham Environmental Affairs Board;
- C.** The Durham City/County Appearance Commission; and
- D.** The Durham Bicycle and Pedestrian Advisory Commission.

Sec. 2.7 Durham City-County Planning Department

2.7.1 Establishment

The Durham City-County Planning Department is established in accordance with NCGS §153A-321 and NCGS §160A-361, and serves as the planning agency and the community development agency for the City of Durham and Durham County. The Department administers this Ordinance for the City and County.

2.7.2 Planning Director

The Planning Director is designated as head of the Durham City-County Planning Department and shall be responsible for administering the provisions of this Ordinance as set forth in this section.

2.7.3 Delegation of Authority

The Planning Director may designate any staff member to represent the Director in any function assigned by this Unified Development Ordinance. The Director shall remain responsible for any final action.

2.7.4 Powers and Duties

The Planning Director or designee shall have the following powers and duties.

- A.** The Planning Director or designee is designated to perform the following duties:
 - 1.** Make studies of the area within the planning jurisdiction and surrounding areas;
 - 2.** Determine objectives to be sought in the development of the study area;
 - 3.** Prepare plans for achieving these objectives;
 - 4.** Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
 - 5.** Advise the governing bodies concerning means for carrying out plans or amending plans;
 - 6.** Accept, receive and disburse funds, grants, and services made available by the Federal government or the State government used in the furtherance of departmental functions;
 - 7.** Administer zoning and subdivision regulations and other related land use controls;
 - 8.** Exercise any functions in the administration and enforcement of various means for carrying out plans that the governing bodies may direct;
 - 9.** Develop, approve, and implement design guidelines;
 - 10.** Develop, approve, and implement administrative procedures and guidelines to execute the provisions of this Ordinance; and
 - 11.** Perform any other related duties that the governing body may direct.
- B.** The Planning Director or designee shall be responsible for reviewing and making recommendations regarding the following:
 - 1.** Applications for sign permits;

2. Applications for floodplain development permits;
 3. Applications for major site plan review;
 4. Applications for major preliminary plat review;
 5. Applications for minor and major certificates of appropriateness;
 6. Applications for special use permits;
 7. Amendments to adopted land use plans;
 8. Amendments to the text of this Ordinance;
 9. Applications for zoning map change;
 10. Applications for historic district/landmark designation; and
 11. Applications for vested rights determinations requiring a public hearing pursuant to Sec. 3.20, Statutory Vested Rights Determination.
- C. The Planning Director or designee shall be responsible for final action regarding the following:
1. Interpretation of this Ordinance;
 2. Administrative adjustments to the specified development standards of this Ordinance;
 3. Applications for subdivision review pursuant to Sec. 3.6, Subdivision Review;
 4. Applications for site plans pursuant to Sec. 3.7, Site Plan Review;
 5. Applications for common and way-finding signage plans;
 6. Applications for home occupation permits;
 7. Administrative certificates of appropriateness;
 8. Petitions for demolition by neglect investigations;
 9. Applications for limited agriculture permits;
 10. Applications for architectural review; and
 11. Applications for temporary use permits.

Sec. 2.8 Durham City-County Inspections Department

2.8.1 Establishment

The City-County Inspections Department is authorized by the North Carolina General Statutes to enforce certain State statutes, State regulations, such as the North Carolina State Building Code, and local ordinances, including, but not limited to, ordinances related to zoning and development.

2.8.2 Inspections Director

The Inspections Director is designated as the head of the City-County Inspections Department and shall be responsible for administering the provisions of this Ordinance as set forth in this section.

2.8.3 Delegation of Authority

The Inspections Director may designate any staff member to represent the Director in any function assigned by this Unified Development Ordinance. The Director shall remain responsible for any final action.

2.8.4 Power and Duties

With regard to this Ordinance, the Inspections Director, or designee, shall enforce provisions of this Ordinance which pertain to new construction and the issuance of building permits and Certificates of Compliance, and shall be responsible for final action regarding:

- A.** Interpretations of matters related to the North Carolina Building Code;
- B.** Interpretations of matters related to Sec. 8.4, Floodplain and Flood Damage Protection Standards; and
- C.** Applications for sign permits.

Sec. 2.9 Other Departments

Other departments may be empowered by the governing bodies to develop, maintain and implement technical standards, specifications, and guidelines.

Sec. 2.10 Summary of Review Authority

The following table summarizes review authority under this Unified Development Ordinance.

Application or Permit	Sedimentation and Erosion Control Officer	Inspections Director	Planning Director	Historic Preservation Commission	Board of Adjustment	Planning Commission	Governing Body	Section
Sedimentation and Erosion Control Officer								
Erosion Control Plan	D						<A>	Sec. 3.8
Inspections Director Action								
Sign Permit		D	R		<A>			Sec. 3.10
Floodplain Development Permit		D	R					Sec. 3.21
Planning Director Action								
Interpretation of the Ordinance		R	D*		<A>			Sec. 3.1
Common and Way-Finding Signage Plans		R	D		<A>			Sec. 3.11
Home Occupation Permit			D					Sec. 3.13
Administrative Certificate of Appropriateness			D	<A>				Sec. 3.17
Demolition by Neglect (City Only)			D	<A>				Sec. 3.18
Limited Agriculture Permit (City Only)			D					Sec. 3.22
Architectural Review			D					Sec. 3.23
Administrative Site Plan Review	R	R	D					Sec. 3.7
Subdivision Review other than Major Preliminary Plat	R	R	D					Sec. 3.6
Temporary Use Permit			D		<A>			Sec. 3.12
Historic Preservation Commission Action								
Certificate of Appropriateness			R	D	<A>			Sec. 3.17
Board of Adjustment Action								
Variance					<D>			Sec. 3.14
Appeal of Administrative Decision					<D>			Sec. 3.15
Design or Minor Special Use Permit			R		<D>			Sec. 3.9
Governing Body Action								
Comprehensive Plan Amendment			R			<R>	<D>	Sec. 3.4
Text Amendment			R			<R>	<D>	Sec. 3.19
Zoning Map Change			R			<R>	<D>	Sec. 3.5
Historic District Designation			R	<R>		<R>	<D>	Sec. 3.16
Landmark Designation			R	<R>			<D>	Sec. 3.16
Major or Transportation Special Use Permit			R				<D>	Sec. 3.9
Vested Rights Determination		R	R				<D>	Sec. 3.20
Major Site Plan Review	R	R	R				D	Sec. 3.7
Major Preliminary Plat	R	R	R				D	Sec. 3.6

R = Review or Recommendation

D = Decision

A = Appeal

<> = Public Hearing Required

* Except as noted in the relevant Ordinance section

[This page intentionally left blank]